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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the Telecommunications	)	
Act of 1996	)	

OPPOSITION OF SPRINT TO PETITIONS FOR RECONSIDERATION

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**OPPOSITION OF SPRINT TO PETITIONS FOR RECONSIDERATION**

Sprint Corporation opposes certain of the petitions for reconsideration of the Commission's October 9, 1997 Second Report and Order in the above-captioned docket (FCC 97-371),<sup>1</sup> in which the Commission established a new per-call compensation rate of \$.284, based on an assumed "market" rate for local coin calls of \$.35, less \$.066 to account for the net of avoided and added costs relating to access code and subscriber 800 calls.

**I. INTRODUCTION AND SUMMARY**

A number of parties are seeking reconsideration of the Commission's order. AT&T challenges the core premises of the Second Report and Order, arguing that it is illogical and economically unsound to base the per-call rate on a mixture of a supposed "market" rate for a different market (local coin calls) and deduction of avoided costs from that rate. AT&T also argues that even under the Commission's flawed approach, it

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<sup>1</sup> This order was issued on remand from the U.S. Court of Appeals for the District of Columbia Circuit in Illinois Public Telephone Ass'n v. FCC, 117 F.3d 555, modified 123 F.3d 693 (D.C. Cir. 1997), reversing the Commission's Report and Order, 11 FCC Rcd 20541 (1996) and Order on Reconsideration, 11 FCC Rcd 21233 (1996) in this docket.

significantly overstated the added costs attributable to dial-around and subscriber 800 calls and significantly understated the avoidable costs relating to such calls. AT&T argues instead that per-call compensation should be based on a “bottom up” costing approach using efficient forward-looking costs, and on that basis the Commission’s per call rate is grossly excessive. In that regard, AT&T furnishes cost data from one RBOC that (like the other RBOC parties) chose not to furnish such data itself (despite Commission requests for the submission of such data). These data show that the costs of a local coin call – before consideration of avoided costs – are under \$.20 per call.

Other parties, including the Consumer-Business Coalition For Fair Payphone-800 Fees (“Consumers”), and Mobile Telecommunications Technologies Corp. (“MTEL”), also take issue with the Commission’s use of a so-called “market-based” approach. The Consumers, who, like AT&T, favor an incremental cost methodology, demonstrate that no meaningful competition (the predicate for any rational reliance on “market” forces) exists in the payphone market, and also describe in detail the serious consequences that the Commission’s excessive rate will have on businesses and consumers throughout the United States. Other parties, such as PageMart Wireless, Paging Network, Inc., Source One Wireless and the Dispatching Parties, argue for either a form of calling party pays or a measured rate per minute, rather than a flat per-call rate, while the Direct Marketing Association seeks a lower rate for subscriber 800 calls than for dial-around calls.

The PSP parties,<sup>2</sup> on the other hand, essentially accept the Commission’s approach to setting the per-call rate, but argue that the Commission overstated avoidable

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<sup>2</sup> Specifically, American Public Communications Council (APCC), Peoples Telephone Co., and the RBOC/GTE/SNET Payphone Coalition (RBOCs).

costs and understated the added costs associated with subscriber 800 and dial-around calls. In addition, the RBOCs argue that the Commission committed error by not taking demand considerations into account (which, they argue, would support even higher rates for these call types than for local coin calls).

Sprint fully supports the petition of AT&T and the other parties that challenge the Commission's reliance on a "market-based" approach. As Sprint discussed in its Comments and Reply Comments On Remand, a cost-based approach would yield a per-call compensation rate in the range of six cents per call.

With respect to the parties that advocate calling party pays, it is not clear whether this issue was properly before the Commission when it adopted the Second Report and Order, but if the Commission (1) continues to adhere to a "market-based" approach to setting the per-call compensation rate and (2) determines that the calling party pays issue is not properly before it at this time, Sprint urges the Commission to promptly issue a further notice of proposed rulemaking (if it deems such a notice to be necessary) opening the calling party pays issue to public comment. Requiring the person who chooses which phone to use for a call – the calling party – to pay, up-front, the compensation to PSPs, is the only way to establish a meaningful market (if such a market can even exist<sup>3</sup>).

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<sup>3</sup> Given that the payphone market is driven not by offering service to consumers at low prices, but instead by offering high commissions to premises owners, Sprint is skeptical that a "market-based" approach, even with calling party pays, will result in compensation to PSPs that is fair to the consumer. Perhaps the best evidence of this fact is the rapid actions of the PSPs, once the Commission blessed \$.35 as a "market" rate for a local coin call, to raise their rates to that level, notwithstanding that their costs appear to be roughly half that level. Even assuming a new entrant, having lower costs than existing PSPs, were to enter the market, it would have to offer higher commissions to premises owners than the incumbents offer in order to induce premises owners to cancel their existing business relationships with PSPs. Thus, it is unlikely that even the emergence of new,

However, Sprint opposes the requests of certain of the paging parties<sup>4</sup> to replace the per-call compensation rate with a measured rate, an issue that Sprint will address later in this opposition. And last, but by no means least, Sprint opposes the attempts by PSPs to raise the per-call rate. The balance of this opposition will address the PSPs' arguments, and the request of certain paging parties to replace the per-call rate with a measured rate.

## **II. THE COMMISSION DID NOT OVERSTATE AVOIDABLE COSTS**

The PSPs all argue that the Commission overstated the avoidable costs relating to access code and subscriber 800 calls, as compared with local coin calls. None of these arguments has any merit – indeed, as shown by AT&T in its petition, the Commission seriously understated the avoidable costs.

### **A. Capital Costs Of The Coin Mechanism**

In ¶52 of the Second Report and Order, the Commission found that the additional capital costs of purchasing and installing a payphone with the capability of handling coin calls should be borne solely by callers who place coin-sent-paid calls and that this cost was an avoided cost for dial-around and subscriber 800 calls. The PSPs (APCC at 9-13, Peoples Telephone at 4-6 and the RBOCs at 8-12) all argue that the capital costs associated with coin mechanism should not have been considered an avoidable cost. They claim that since the bulk of a payphone's call volume comes from coin calls, no phones – or at least far fewer phones – would be placed if they could not handle coin

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more efficient PSPs would result in lower charges to the public. Rather, efficient entry would only serve to increase the monopoly rent captured by the premises owners.

<sup>4</sup> PageMart Wireless and Paging Network, Inc.

calls. Thus, they claim, the cost of the coin mechanism is a joint and common cost that should be attributable to coin and coinless calls alike.

Sprint fully agrees with these parties that the revenue stream from coin-sent-paid calls is the driver in their decision to place a payphone, but disagrees that, as a result, the coin mechanism costs should be attributed to non-coin calls as well. Indeed, in the real world, with compensation for subscriber 800 and dial-around calls simply a recent windfall resulting from government largess, the two million payphones that exist today were placed only because the PSPs were able to recover all of their costs from coin calls (and possibly, but not necessarily, commissions from 0+ calls as well). As the CEO of one PSP put it:<sup>5</sup>

“I’ve always maintained one thing,” say Jerry Berger, chief executive officer of AmeriCall. “I did not accept a location if I could not amortize 100 percent of my interest and principal payments and all my salaries, general and administrative expenses strictly out of coin. If I had to depend on the revenue from operator services, let alone surcharges, I didn’t want the phone. To me, operator services and any type of surcharges revenue is strictly gravy.”

Given the real world behavior of PSPs (not to mention their newly-granted ability to set local coin rates free of any regulatory restraint), and their admission that local coin revenues drive their decision to install payphones, access code and subscriber 800 calls are simply an adjunct to this primary service, and should not have to bear any more than marginal costs.

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<sup>5</sup> “FCC Order Jump Starts Industry,” Phone+, December, 1996, at 64-66.

At the very least, there is no justification for attributing the added capital costs relating to the coin mechanism to the non-coin traffic. Just because the pay telephone is installed to serve the two different types of traffic, it does not follow, either as a matter of logic or fairness, that the total cost of the phone should be allocated equally among all users. For example, in setting access charges, the Commission has never required special access users to bear a portion of local switching costs, even though the availability of switched local service is the key driver behind the ubiquity of local network, a ubiquity that results in lower costs for private line (special access) service than if that service were offered as a stand-alone service through a separate network. There is likewise no basis here for requiring access code and 800 subscriber calls to bear the cost of an equipment feature – the coin mechanism – that is not used for such calls.

The RBOCs also argue (at 12-13) that the Commission overstated the cost of the coin mechanism, citing an Arthur Andersen report appended as Attachment A. The Andersen report, however, is based on hearsay information with no verifiable backup detail. Furthermore, it is based on a highly selective use of the facts. For example, whereas the Commission assumed a depreciable life of ten years for payphones, the Andersen report claims (at 7) that the RBOCs in fact use a seven year life for coinless phones, but conveniently accepts (without comment) the Commission's use of a ten-year life for coin phones. The Andersen report then makes a 43% upward adjustment in coinless phone costs to account for the "fact" that such phones would have to be replaced more often than coin phones having a ten-year life. But what Andersen and the RBOCs fail to disclose, however, is what useful life the RBOCs use for coin phones. With the undeniable added wear and tear relating to the coin mechanism and the susceptibility of



coin phones to vandalism that would not be present for coinless phones, it is inconceivable that, in reality, coinless phones have a shorter depreciable life than coin phones. Sprint remains mystified that the Commission would grant the RBOCs any per-call compensation without requiring them to submit comprehensive, detailed and verifiable cost data. In the absence of such data, the Commission cannot fall prey to the spurious apples and oranges comparisons that the RBOCs and their consultant attempt to foist on the Commission.

Similarly, the RBOCs (at 14-15) argue that the avoided capital costs should be calculated on the basis of the average number of calls handled, rather than the Commission's use of the call volume of an assumed "marginal" payphone. They argue that calculating the unit avoided costs by using the "marginal" phone's call volume results in an even larger avoided cost, in total dollars, for the "average" payphone than the Commission found to be the case, thus resulting in a windfall for IXC's and a shortfall for PSP's. The RBOCs again have it backwards. The fact that they on average handle a larger number of total calls, both coin and coinless, than the number assumed by the Commission for purposes of calculating the avoided costs, means that they have a windfall from IXC's who are, collectively, overpaying for all payphones that generate more actual calls per month than the "marginal" phone used in the Commission's calculation.<sup>6</sup> The Commission assumed that the "marginal" payphone would generate

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<sup>6</sup> In a proper cost-based rate approach, Sprint remains of the view that costs should be determined on the basis of efficient call volumes, not average, much less marginal, call volumes. It is only by basing unit costs on an efficient operator that the Commission will encourage efficiency in the payphone industry. There has never been any serious concern expressed that historically, too few payphones have been available. To the extent that that concern should arise in the future, Section 276 provides a mechanism – public

121 access code and subscriber 800 calls instead of an assumed industry average of 152 such calls (see ¶50 and n.132). Thus the Commission, in effect, determined that “fair compensation” to the PSPs consists of recovering \$34.36 per phone per month ( $\$.284 \times 121$ ). In fact, however, the average phone will generate \$43.17 ( $152 \times \$.284$ ) monthly in payments from IXC to PSPs,<sup>7</sup> thus giving the PSPs a substantial windfall of \$8.18 per month.

#### **B. Local Call Completion Costs**

The RBOCs argue (at 15-16) that the FCC overstated the call completion costs of local coin calls, or the line cost savings associated with access code calls and subscriber 800 calls. The basis of their claim is that the Commission’s “high” estimate for this expense – three cents per call – was higher than the 2.9 cent estimate the Commission attributed to AT&T, while the “low end” cost of 2.5 cents was higher than the estimate of CCI and, for that matter, the RBOCs.<sup>8</sup> In fact, the avoided local call completion costs associated with coinless long distance calls are much greater than any of these estimates. The Commission’s use of AT&T’s \$.029 figure was taken out of context. That cost related to the total cost per call of a line needed for a coinless payphone; it was not an estimate of the avoided local call completion cost – the cost difference between a local

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interest payphone support – to solve that problem. It should not be solved by giving excessive profits to PSPs, by providing a windfall for all phones that carry more than a “marginal” number of calls.

<sup>7</sup> This assumes that 152 calls in fact constitutes the average volume of access code and subscriber 800 calls. However, as pointed out in Sprint’s Reply Comments on Remand Issues (at 24), no statistically valid call volume data were presented by PSPs.

<sup>8</sup> In this regard, the RBOCs also fault the Commission for disregarding their costs.

coin call and the calls here in question. On the contrary, AT&T showed that the avoided local call completion costs amount to between five and eight cents per call. See AT&T Reply, September 9, 1997, at 24-27; see also, AT&T Petition for Reconsideration at 18-19. Thus, rather than overstating the avoided local line costs, the Second Report and Order egregiously understated those costs.

### **III. THE COMMISSION DID NOT UNDERESTIMATE THE ADDED COSTS ASSOCIATED WITH DIAL-AROUND AND SUBSCRIBER 800 CALLS**

#### **A. Bad Debt/Collection Costs**

The PSPs fault the Commission for not including in its calculus an allowance for bad debt and/or collection costs and seek to refute the Commission's finding that the record lacks sufficient information on such costs.<sup>9</sup>

Peoples relies on its own bad debt allowance for the first nine months of 1997. However, Peoples fails to indicate how it calculated this bad debt expense. Peoples also ignores the fact that, with the Court of Appeals' vacatur of the Commission's earlier orders,<sup>10</sup> no IXC is under any present legal obligation to have made any payments to Peoples (or any other PSP) for that period.

The RBOCs and APCC both rely on the data that APCC had submitted earlier – that 8% of APCC's billed charges under the previous dial-around compensation plan were not collected and that there should be an additional allowance of between 0.5 and 1.0 cents per call for expenses PSPs incur in collecting their compensation and funding clearinghouses for that purpose. However, as Sprint pointed out in its Reply Comments

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<sup>9</sup> APCC at 14-15; Peoples at 6-8; and RBOCs at 16-18.

<sup>10</sup> See n. 1, supra.

on Remand (at 9-10), APCC's "uncollectible" experience may have little to do with genuine bad debt. As Sprint pointed out, it is Sprint's experience that APCC would sometimes double bill – seeking to collect dial-around compensation on behalf of two PSPs for a single ANI . In addition, sometimes APCC would bill for an ANI on behalf of a particular PSP, but that PSP would bill Sprint directly as well. Obviously, no IXC can be expected to pay twice for calls made from the same phone, and thus as long as such duplicative billing exists, no PSP or PSP clearinghouse can be expected to be paid in full for every cent they bill. Moreover, the bills here are highly unusual in that they are bills mandated by the government agency that regulates the payors. Under such circumstances, once a stable, judicially sanctioned level of compensation is in place one can expect bad debt to be virtually zero. With respect to the other collections expense APCC and the RBOCs seek to recover, Sprint believes there is no evidence to support any such allowance. The PSPs' billing and collection expense amounts to the cost of sending a letter to each IXC, once each quarter saying, "Here I am, here is a list of my payphone ANIs; give me some money." The cost of sending out such letters is de minimis. If PSPs wish to pay APCC or other clearinghouses for performing this service, and increase their costs in the process, that is their own business decision, but one which should not serve to increase their compensation from PSPs.

#### **B. ANI Digit Costs**

The other "added cost" argument made by the PSPs is that the costs of ANI digit upgrades should be divided by only the dial-around and subscriber 800 calls, not all calls. See APCC at 16-17 and RBOCs at 18-21. In making this argument, the PSPs turn their own logic on its head. Where the capital costs of the coin mechanism are concerned, they

argue that the cost of features used exclusively by the basic service – coin calls – should be shared by both the basic service and the adjunct service (dial-around and subscriber 800 calls) as well. Here, however, they want the adjunct service, but not the basic service, to cover costs (they claim) are needed only for the adjunct service. The PSPs cannot have it both ways.

More fundamentally, there is no basis on this record to warrant any allowance for such costs. First, to Sprint's knowledge, no LEC has filed a tariff seeking to impose these costs on PSPs, and unless or until such tariffs are filed, scrutinized by the relevant regulatory agency and permitted to go into effect, any allowance for these costs is obviously inflated and speculative. Instead, the actual cost is zero. Second, the ANI digits are sent out with every call regardless of the nature of the call and are useful not only for access code and dial-around calls, but for other call types as well (e.g., 0+ calls).

In any event, even if such an allowance were to be allowed in advance of any actual costs being incurred, the allowance the Commission made was inordinately excessive. The Commission allowed for \$600 million of additional LEC investment to furnish ANI digits, relying on a USTA ex parte submission and simply ignoring MCI's arguments that USTA had grossly overstated the costs. As AT&T points out (Petition, 19-20), just after the Second Report and Order was issued, USTA acknowledged that its previous ex parte had grossly overstated these costs and provided new data showing the costs of implementing Flex ANI for equal access end offices amount to \$61.2 million – one-tenth of the allowance built into the Commission's per-call rate.<sup>11</sup> Not only are these

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<sup>11</sup> Sprint is disappointed that the Commission has not already undertaken to correct this error on its own motion. AT&T urged the Commission to correct the rate for this error in

costs speculative (since no PSP is paying today for delivery of the ANI digits) and de minimis (one-tenth the Commission's previous estimate) but, as AT&T argues (at 20), these costs also can be legitimately regarded as set-up costs for receiving payphone compensation that should be borne by the PSPs themselves, rather than IXC's.

#### **IV. OTHER RBOC ARGUMENTS ARE WITHOUT MERIT**

The RBOCs also argue (3-8) that the Commission erred by refusing to take demand conditions into account, arguing that elasticity differences between local coin calls on the one hand and dial-around and subscriber 800 calls on the other, warrant higher compensation for the latter calls than the rate charged for local coin calls. The RBOCs' argument is built on a mathematical house of cards that simply does not square with reality. The RBOCs' argument (and that of their economist) was thoroughly discredited by AT&T in its September 9, 1997 Reply Comments (see Attachment 3, Declaration of Dr. Frederick R. Warren-Boulton). If the Commission wants to test out the RBOCs' fanciful theory, it should not do so at the IXC's expense. Instead, the Commission should promptly reopen the calling party pays issue, adopt calling party pays, and see how willing consumers are to pay in excess of 40 cents per call for toll free calls from payphones.

Finally, the RBOCs argue (22-25) that the Commission's bottom-up costing approach understates the costs of dial-around and subscriber 800 calls from payphones.

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its ex parte letter dated October 30, 1997, and Sprint likewise urged such action in its November 13, 1997 Reply Comments on ANI Digit Waiver Requests (n.7 at 4). The Commission has been quite quick to take action sua sponte in this proceeding when that action benefits the PSPs or LECs. See e.g., orders of the Chief, Common Carrier Bureau released April 4, 1997 (DA 97-678), April 15, 1997 (DA 97-805), and October 7, 1997

Since the Commission expressly refrained from relying on that analysis in its decision, Sprint will not respond to the RBOCs' arguments in detail. However, it is worth reiterating again that thus far they have failed to present any meaningful cost data of their own – with the Commission's inexplicable acquiescence – and the LEC cost data that are available on the record shows that per-call costs from payphones are far lower than the per-call rate adopted by the Commission.

**V. THE COMMISSION SHOULD NOT CONVERT THE PER-CALL RATE TO A MINUTE OF USE RATE**

PageMart (at 3-6) and Paging Network, Inc. (at 6-17) both argue for a measured, per-minute of use rate for payphone compensation, instead of a flat rate per call. These parties claim that the per-call rate is particularly burdensome on customers who experience short-duration 800 calls. Sprint is sympathetic to these parties' concerns but submits that the best way to address those concerns is to have a reasonable, cost-based compensation system, rather than one based upon inflated notions of payphone costs and implausible "market-based" concepts. From the time that the Commission's Report and Order was released in this proceeding 16 months ago, Sprint has geared its developmental efforts – in terms of both call tracking/compensation systems and surcharge capabilities – on the basis of the Commission's determination that the rate would be a per-call rate, rather than a measured rate. It would require substantial additional time and effort to modify those systems to accommodate a measured rate. It is far from clear that if the Commission undertook to do so, it would have given proper notice, since the issue of a

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(DA 97-2162), all of which gave LECs additional time to comply with requirements of the Commission's earlier orders in this proceeding.

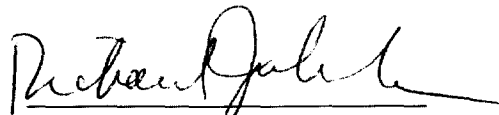
measured rate had not been previously raised. At a minimum, the Commission should not consider this issue without full exploration, through a further notice of proposed rulemaking, that would give all affected parties the opportunity to develop a full record on the costs and other implications of converting from per-call rates to per-minute rates, including the time needed to accomplish a conversion.

## VI. CONCLUSION

Sprint urges the Commission to grant AT&T's petition (and those of the Consumers and other parties that attack the per-call rate as being excessive), and to establish a cost-based rate, based on the costs of an efficient PSP. Sprint does not object, in principle, to calling party pays if the Commission continues to insist on the notion that the per-call compensation should be "market-based." In all other respects, however, the petitions for reconsideration should be denied.

Respectfully submitted,

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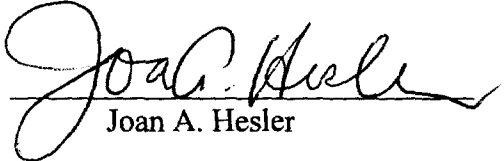
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of Sprint to Petitions for Reconsideration was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 7<sup>th</sup> day of January, 1998 to the below-listed parties:



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